

***United States Court of Appeals  
for the Second Circuit***



**APPELLEE'S  
APPENDIX**





*Original with Affidavit of  
Mailing*

**76-6044**

**B**

**United States Court of Appeals**

**FOR THE SECOND CIRCUIT**

**Docket No. 76-6044**

**P/S**

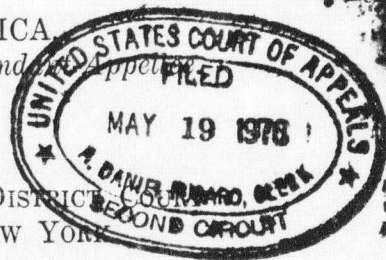
WILLIAM BARTH, as parent and natural guardian of  
Deborah Barth, an infant, and WILLIAM BARTH,  
individually,

*Plaintiffs-Appellants,*

*—against—*

UNITED STATES OF AMERICA

*Defendant-Appellee*



ON APPEAL FROM THE UNITED STATES DISTRICT  
FOR THE EASTERN DISTRICT OF NEW YORK

**GOVERNMENT'S APPENDIX**

DAVID G. TRAGER,  
*United States Attorney,  
Eastern District of New York.*

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UNITED STATES DISTRICT COURT

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74074

EASTERN DISTRICT OF NEW YORK

----- X

WILLIAM BARTH, as Parent and Natural :  
Guardian of the Infant, DEBORAH BARTH, and :  
WILLIAM BARTH, Individually, :

Plaintiffs, :

-against- :

UNITED STATES OF AMERICA, :

Defendant. :

----- X

United States District Court,  
Eastern District of New York,  
225 Cadman Plaza East,  
Brooklyn, New York

February 27, 1975,  
11:00 o'clock A. M.

Deposition of the Defendant, UNITED STATES OF  
AMERICA, by MOS R. D LS, JR., taken by the Plaintiffs  
pursuant to Notice.

*Beekman Reporting Service*

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150 Nassau Street

New York, N.Y. 10038

W O R T H 2 - 5 9 5 4



A p p e a r a n c e s :

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BY: EDWARD S. RUDOFKY, ESQ.,  
Assistant U. S. Attorney.

---oOo---

IT IS HEREBY STIPULATED AND AGREED by and between  
the attorneys for the respective parties hereto that:

The filing of this deposition is waived;

All objections, except as to form, are reserved  
to the time of trial;

This deposition may be signed and sworn to before  
any officer authorized to administer oaths;

A copy of this deposition will be furnished by  
the attorney for the plaintiffs without charge to the  
attorney for the defendant.

---oOo---

2 AMOS R. DANIELS, JR., called as a witness,  
3 having been first duly sworn by a Notary Public of the  
4 State of New York, was examined and testified as follows:

5 EXAMINATION BY

6 MR. KAPLAN:

7 Q What is your name and address?

8 A Amos R. Daniels, Jr., 4028 Tarnywood Drive, Ports-  
9 mouth, Virginia 23703.

10 Q Mr. Daniels, are you a member of the United States  
11 Coast Guard?

12 A Yes.

13 Q For how long have you been a member of the United  
14 States Coast Guard?

15 A Twenty-four years, four months.

16 Q What is your current rank?

17 A Lieutenant.

18 Q Where are you stationed?

19 A In Coast Guard District Office Five, District of  
20 Portsmouth, Virginia.

21 Q On June 24, 1972, where were you stationed?

22 A At the Fire Island Coast Guard Station.

23 Q Where was the Fire Island Coast Guard Station  
24 located?

25 A In Robert Moses State Park, to the east of Robert



2 Moses State Park, the far side.

3 Q What was your position at that time?

4 A Commanding Officer.

5 Q When had you first been stationed on Fire Island?

6 A Do you mean when did I arrive?

7 Q Yes.

8 A In July of 1970.

9 Q Were you the Commander at that time?

10 A I assumed command upon arrival.

11 Q When did you leave the Fire Island Station?

12 A August, 1973.

13 Q As Commander of the Fire Island Station, was there,  
14 within your district, a certain Coast Guard tower located on  
15 what is known as Democrat Point?

16 A There was a Coast Guard tower on Democrat Point.

17 Q Was that tower located there when you first as-  
18 sumed command of that station?

19 A It was.

20 Q Where was it located?

21 A On Democrat Point approximately two and a half  
22 miles to the west of the Station.

23 Q Was it in operation or in use when you assumed  
24 command?

25 A No, it was not.

1  
2 Q Do you have any knowledge as to the last time it  
3 was a functional operating watchtower?

4 A Only by referring to some records, and information  
5 verbally passed on to me. I believe it was about in 1966 or  
6 1968; somewhere in that neighborhood.

7 Q Who was in command of that tower prior to your  
8 taking over?

9 A William Ailiff.

10 Correction, as far as commanding the tower, he was  
11 not the Commander of the tower. He was the Commanding Officer  
12 of Fire Island Station.

13 Q Do you know where he is located now?

14 A Yes, the Coast Guard Auxiliary, Director of the  
15 Southern Area, the Third Coast Guard District, which is now  
16 located in Chester, New Jersey.

17 Q Do you know if there was someone under his command,  
18 was there a Commander, someone in charge of the tower, or would  
19 this fall under the general jurisdiction of the District Com-  
20 mander?

21 A At the time that it was in commission, it would  
22 fall under the jurisdiction of the Fire Island Station Officer.  
23 However, the tower was out of commission, so it was really  
24 under no one's jurisdiction.

25 Q Some time in your tenure as Commanding Officer of



1  
2 the Fire Island Station, would this tower be under your juris-  
3 diction?

4 A Had it been in commission, yes.

5 Q Some time during your tenure as the Station Com-  
6 mander, did you have occasion to visit this tower?

7 A Not for an official visit, to inspect, or anything  
8 of that nature; no.

9 Q Did you ever see the terminal, at any time, during  
10 your tenure as Station Commander?

11 A Yes, we have to look to the west, you could always  
12 see the tower.

13 Q Did you ever visit the tower in an unofficial  
14 capacity; did you ever physically view the tower from a close  
15 distance?

16 A Not until I was directed to go to the tower after  
17 the alleged accident.

18 Q Did anyone under your command have occasion to  
19 inspect the tower prior to this accident and subsequent to  
20 your taking over as Station Commander?

21 A No.

22 Q Do you have, in your possession, or have you been  
23 able to see any records which would indicate the condition of  
24 the tower at the time you assumed the post of Station Com-  
25 mander?

2 A Would you repeat that?

3 Q As Station Commander, did you receive any records  
4 or any other information which would indicate the condition  
5 of the tower as of the date you took over as Station Com-  
6 mander? For example, if there were any apparatus or parts  
7 of the tower that had been removed, or the actual physical  
8 condition of it.

9 A The only information I received was verbally, and  
10 that was from Lieutenant Ailiff, whom I was relieving as  
11 Commanding Officer. He told me that the tower had been sur-  
12 veyed, or was in the process of being surveyed, and it had  
13 been abandoned in the year of 1966 or 1968; and that is all  
14 the information I had.

15 Q He told you it was surveyed; for what purpose was  
16 it being surveyed?

17 A For destruction.

18 Q Do you know if, when you took over in 1970, for  
19 instance, the thermo pane windows, were they still in the  
20 tower?

21 A To my knowledge, no.

22 Q No, they weren't; or no, you do not know?

23 A For a fact, I do not know.

24 Q Would there be any records which would indicate  
25 when these windows were removed, if they were officially



1 removed, other than being vandalized?

2 A No.

3 Q When you took over the Station as Commander in  
4 1970, do you know if there were any signs posted pertaining  
5 to the property, such as "No trespassing" signs?  
6

7 A No, I do not.

8 Q Did you have any occasion to review such signs  
9 during your tenure as Station Commander?

10 A I saw no signs on it. I put signs on it myself  
11 after the accident.

12 Q Did you, or anyone under your command, ever put  
13 signs on it before the accident?

14 A Verbally, I was told by my Executive Officer that  
15 he had put signs on it, and there had been a continuous pro-  
16 gram of keeping the signs on because of vandalism.

17 Q Would there be any records or logs kept as to when  
18 such signs had been placed at the tower?

19 A No.

20 Q At any time, from the date that you took over as  
21 Station Commander, until the happening of this accident, did  
22 you have any knowledge of any persons using this tower for  
23 recreational facilities or sightseeing, or what have you?

24 A No.

25 Q Did you ever hear of any people climbing the tower,

1  
2 or using the tower as a viewing post?

3 A No.

4 Q Was that tower owned by the Coast Guard?

5 A I, personally, don't know, but from looking at all  
6 the records, I would say yes.

7 Q Do you know if the land upon which it was located  
8 was owned by the Coast Guard, the United States Government,  
9 or some other governmental agency?

10 A Again, by looking at the records, I believe the  
11 land was leased to the government, to the State.

12 Q In viewing the records, did you have occasion to  
13 read or review an agreement between the State and the Coast  
14 Guard?

15 A This morning, I have briefed through it for the  
16 first time.

17 Q If I show you this permit, is this the document  
18 that you had occasion to see?

19 A Yes.

20 MR. KAPLAN: We will mark this as Exhibit No. 8.  
21 It is entitled "Permit," and it consists of four pages,  
22 and it is dated April 19, 1967. It is between the Long  
23 Island State Park Commission and the Department of  
24 Transportation Coast Guard.

25 (Document entitled "Permit," dated April 19, 1967.



1  
2 between the Long Island State Park Commission and the  
3 Department of Transportation" was marked as Plaintiffs'  
4 Exhibit No. 8 for identification, as of this date.)

5 BY MR. KAPLAN:

6 Q When you assumed your position as the Station  
7 Commander, were you given any specific instructions pertaining  
8 to this Coast Guard tower?

9 A No.

10 Q Would the correct terminology as to the status of  
11 the structure at the time you assumed your post as Station  
12 Commander be that the tower was abandoned, or what would the  
13 terminology be?

14 A The tower has been put out of commission.

15 Q Would there be a record as to when the tower was  
16 put out of commission?

17 A That information I didn't have until this morning,  
18 and in looking through those records I thought I saw something  
19 that indicated an approximate date that it was put out of  
20 commission. I believe it was 1968.

21 Q I show you a letter dated 22 April, 1968, and ask  
22 you if this, in any way, refreshes your recollection.

23 A Yes, it is the one I was referring to. And this  
24 is a letter of approval from the Commander of the Third Coast  
25 Guard District dated 22 April, 1968, approving the request of

2 terminating the watches on the Fire Island Lookout Tower.

3 Q Do you know, at the time the watches were termi-  
4 nated, were inspections made of the tower?

5 A No, I did not make any.

6 Q If such an inspection was made and a record was  
7 kept, do you know where that record would be today?

8 A No, I don't.

9 MR. KAPLAN: We will mark this letter for identi-  
10 fication. It is dated April 22, 1968, and this is per-  
11 taining to the termination of the watch on the Fire  
12 Island Lookout Tower.

13 (Letter dated April 22, 1968, pertaining to the  
14 termination of the watch on the Fire Island Lookout  
15 Tower, was marked as Plaintiffs' Exhibit No. 9 for  
16 identification, as of this date.)

17 Q Lieutenant Daniels, I am sorry if I asked you this  
18 question before, but, to your knowledge, did anyone under your  
19 command, from the time you assumed the post of Station Com-  
20 mander until the date of the accident, ever physically visit  
21 the Coast Guard tower pursuant to your instructions, or not  
22 pursuant to any specific instructions?

23 A To my knowledge, no.

24 Q Up until the time of the accident, had you ever  
25 been contacted by anyone in the Coast Guard, or any other



1 governmental department, concerning the demolition of this  
2 tower?

3  
4 A No.

5 Q Other than this information that you had received  
6 from Lieutenant Ailiff, did you have any other knowledge that  
7 this tower was being considered for demolition prior to the  
8 date of the accident?

9 A I don't quite know how to answer that, because  
10 there was, at one time, a conversation between Mr. Ailiff and  
11 I about the tower and it being surveyed. In looking at the  
12 records this morning, I see there is a Board of Survey meeting  
13 in there for May of 1972, I believe. That might have been  
14 the one that we referred to, but due to the lapse of time, I  
15 can't place the exact time as to when this conversation took  
16 place.

17 Q Other than your reviewing this particular record  
18 this morning concerning the meeting of the Board of Survey in  
19 May of 1972, do you have any other knowledge of this Board of  
20 Survey meeting pertaining to this particular tower?

21 A No.

22 Q In other words, anything you know is what was indi-  
23 cated in what you read this morning?

24 A That's right.

25 Q I show you a document entitled, "Proceedings of

2 Board of Survey," dated May 8, 1972; and ask you if this is  
3 the document that you reviewed this morning.

4 A It is like the one I saw. The one I saw had the  
5 signatures of approval all the way down to the Commandant.

6 Q I show you another copy of it, and specifically  
7 referring to the back page, which has all signatures indicated;  
8 is that the document that you saw?

9 A Yes, that is it.

10 MR. KAPLAN: This particular page has previously  
11 been included in Plaintiffs' Exhibit No. 2 for identi-  
12 fication. It will be marked as Exhibit No. 10, it is a  
13 one-page document, front and back, entitled, "Proceedings  
14 of the Board of Survey," dated May 8, 1972, concerning  
15 the Fire Island Station. The front page lists the find-  
16 ings, opinions and recommendations. The back of it  
17 indicates signatures by Lieutenant Askey, Chief Warrant  
18 Officer Hill, and Mr. Canapari, signed by Chief of Staff  
19 Thompson, and Officer Wilhelm.

20 (Document entitled "Proceedings of the Board of  
21 Survey" dated May 8, 1972, was marked as Plaintiffs'  
22 Exhibit No. 10 for identification, as of this date.)

23 Q Lieutenant Daniels, at some point did you become  
24 aware of an accident that happened on June 24, 1972?

25 A Yes, I did.



2 Q How did you become aware of this accident?

3 A Exactly, I don't remember, but it was someone  
4 coming to me, verbally telling me that a girl had allegedly  
5 fallen from the tower; whether it was a member of the Station  
6 or one of the State Park Police who quite frequently frequent  
7 the Station for coffee breaks and what have you, I don't re-  
8 member.

9 Q As a result of your receiving this information,  
10 did you, at some time subsequent, visit the tower?

11 A As a result of receiving that information, I mainly  
12 informed the Group Commander, who was Mr. Ailiff, by message,  
13 I believe. I do not have a copy of this message. However,  
14 the Board of Investigation makes reference to a message from  
15 the Station which most likely would be furnished to the Group  
16 Commander with the information that I had available at the  
17 time.

18 Q Did you then visit the tower?

19 A Yes, I did.

20 Q Do you remember when you visited the tower?

21 A I would have to look at the records for the exact  
22 date, but I believe it was the 27th of June. It would be on  
23 the photos which I took of the tower.

24 Q I show you four Polaroid photographs. Did you  
25 take these photos, yourself, when you visited the tower?



1 A Yes, I did.

2 Q Do those photos indicate the date upon which you  
3 visited the tower?

4 A Yes, they do. At 1300 way back on June 27, 1972.

5 Q Did you personally make an inspection of the tower  
6 upon your visit there?

7 A Yes, I did.

8 Q Did you climb to the top of the tower?

9 A Yes, I did.

10 Q Can you tell me your impression regarding the  
11 condition of the tower when you climbed it?

12 A The tower was in very good condition. It was in  
13 need of paint, but aside from that, the steel structure of the  
14 tower was in very good condition.

15 Q Were any parts of the tower or pieces of equipment  
16 missing from the tower, upon your inspection?

17 A Yes. The lookout section of the tower which was  
18 wood, at one time it had some kind of plastic glass plating  
19 on it, and the glass was gone; some of the sheetrock in the  
20 inside of the lookout tower section was destroyed, and the  
21 hatch covers on the inside and out on the platform were miss-  
22 ing.

23 Q When you visited the tower on June 27, 1972, were  
24 there any signs posted concerning the tower, either its  
25

ownership or warning signs?

A No, they had been destroyed.

Q I believe you indicated that you then placed some signs at that tower?

A Right at that time I had stencils made in six-inch letter size and had it spray-painted onto the concrete base, "U. S. Government Property, Keep Off."

Q How did you get to the tower; did you walk or drive?

A I drove all the way. This is paved road about a mile down toward the tower, and from that point it is all beach and sand, and you have to have a four-wheel drive vehicle to get there; and I had a four-wheel drive vehicle.

Q As a result of your inspection, did you make a report to the Commander of the Third Coast Guard District?

A No, I was directed to go down by the Group Commander, Mr. Ailiff, to take pictures of said tower. That's what I did, I furnished him the pictures.

Q Did you make out any reports based upon your inspection?

A No.

Q Did you communicate to Lieutenant Ailiff any findings or any information that you had ascertained, either pertaining to the accident or pertaining to the condition of the



1 tower, based upon your inspection?

2 A I can't recall for sure, because, again, the  
3 lapse of time, but Mr. Ailiff was directed by the Commander  
4 of the Third Coast Guard District to conduct an informal  
5 investigation, which is a routine requirement any time there  
6 is an injury or any type of an accident involving government  
7 equipment. And he did visit me at the Station and talk to me  
8 numerous times in relation to the tower.

9 Q But you never furnished any written report?

10 A At no time was there any written report.

11 Q Did you ever speak to anyone or interview anyone  
12 else pertaining to this accident?

13 A The officer, the policeman who was on the scene,  
14 I talked with him one time, I believe.

15 Q Would that be a police officer by the name of  
16 Manno?

17 A I do not remember his name. The only thing I  
18 remember about the gentleman was that he was a summertime  
19 employment. The State Park Service increases the complement  
20 of the police force during the summertime by using school-  
21 teachers, et cetera, that are qualified in this area; and he  
22 is one of the regular summertime police employees.

23 Q Lieutenant Daniels, I show you a letter dated  
24 June 30, 1972, from Lieutenant Ailiff to the Commander, Third  
25

Coast Guard District; and ask you if you have ever seen this document before.

A Yes, this is a copy of Mr. Ailiff's informal Board of Investigation to the Commandant of the Coast Guard via the Third Coast Guard District.

Q As far as you know, would this be a record kept in the regular course of the business, a regular duty of Mr. Ailiff to make such a record?

A It is a requirement of a senior officer, somewhere in the line of chain of command, to conduct an informal investigation. Who would conduct it would depend on who would have been directed to do it. In this case, the Commander of the Third Coast Guard District had directed him to conduct such an investigation.

MR. KAPLAN: I will have this letter marked as Exhibit No. 11. It is a two-page letter report which has previously been identified.

(Letter consisting of two pages dated 30 June, 1972, was marked as Plaintiffs' Exhibit No. 11 for identification, as of this date.)

Q Lieutenant Daniels, were you ever directed or instructed to compile any sort of report or investigation pertaining to this accident?

A No.



Q You were only requested to view the premises or inspect the premises?

A I was requested by Lieutenant Ailiff, the Group Commander, to assist him in his conducting of the informal investigation by having taken the pictures of the tower.

Q Lieutenant Daniels, I show you a copy of a note concerning this accident; and ask you, one, you have either ever seen this note, or two, if you have any knowledge as to the person to whom it is either addressed, or from whom it comes?

A No, I have never seen it.

Q Do you know anyone who would have the initials, "J. A. R."?

A No.

Q Again, Lieutenant Daniels, I show you a memo routing slip; and ask you if you can identify the memo or interpret any of the people referred to in it.

A No, I cannot.

Q Again, Lieutenant Daniels, I show you another message; and ask you if you can identify the message, or any of the parties thereto.

A No, I have never seen it before, nor can I identify any of the initials, except there is one, "D. C. S.," it stands for Chief of Staff, but that is all.

Q Do you know what Chief of Staff that would refer to?

A In name?

Q Yes.

A No, I don't.

Q Were you the Station Commander on Fire Island when the tower was demolished?

A Yes.

Q Were you communicated with by anyone, either the Coast Guard or from the Engineer's Office concerning the demolition of this tower?

A I received information that the tower was going to be destroyed. I don't recall now as to how I received it; whether it was by a phone call or message. However, the destruction team did arrive and destroy the tower, and they stayed at the Fire Island Coast Guard Station at the time the tower was being destroyed.

Q During your tenure as Station Commander, did you ever receive any communications or any correspondence from either the State Park Police or any other Governmental agency concerning the use of the Coast Guard tower by residents of the area?

A No.

Q You have indicated that you had no knowledge that



the Coast Guard tower was being used by residents of the area;  
Is that correct?

A That is correct.

Q As Station Commander, did you have anyone under  
your command at that particular post?

A Did I have anyone under me?

Q Yes.

A Yes, I had several men under me.

Q Were these men stationed at the same Fire Island  
Station, or were they stationed at other posts?

A They were stationed at Fire Island. It was a  
thirty-six-man station, and the number of men assigned there  
would fluctuate anywhere from twenty to thirty-six.

Q Were you asked to submit, or did you, in fact,  
submit any information or reports or findings to the Board of  
Survey in regard to this Coast Guard tower?

A In writing, no.

Q Did you communicate any information orally to the  
Board of Survey itself, or to any member of the Board of  
Survey?

A I beg your pardon, to the Board of Survey, no.  
I was thinking of the information Board of Investigation.

Q That was after the accident?

A That was after the accident.



Q In other words, you had no communication with anyone concerning this tower prior to the accident?

A No, I didn't.

MR. KAPLAN: I have no further questions.

oOo

EXAMINATION BY

MR. RUDOFISKY:

Q Lieutenant Daniels, I would like to direct your attention to Plaintiffs' Exhibit No. 10 for identification, which is entitled, "Proceedings of the Board of Survey." Are you familiar with the operations of such a board, and its duties and responsibilities?

A A Board of Survey?

Q Yes.

A Yes.

Q What is the basis of your familiarity?

A Well, I have personally myself conducted Board of Surveys, numbers of them in the past.

Q Would you approximate how many boards you have either been on or conducted?

A Well, no. I couldn't say, because any piece of government equipment that is listed as a title property, such as Title A or B property, at any time that this property becomes beyond its economical value or worn out, it is surveyed

2 as a process of elimination. You might survey one a week, or  
3 you might go six months and survey none.

4 Q Does each Board of Survey result in a report such  
5 as Plaintiffs' Exhibit No. 10?

6 A On smaller items, they are not in detail. It is  
7 normally a routine one-page type of a Board of Survey.

8 Q Based on your experience, can this be characterized  
9 as a detailed report; is that your testimony?

10 A I would say this is a detailed normal record for  
11 a Board of Survey of this type, yes.

12 Q Based upon your experience, generally, in the Coast  
13 Guard and specifically as a member and Commander and a member  
14 presiding on a Board of Survey, as of the date of this report  
15 or survey, 8 May, 1972; if this tower had been badly vandalized  
16 or showed signs of bad vandalism, would that have been re-  
17 flected in the report in the normal course of business of the  
18 board?

19 A I would think so. That depends on the man who is  
20 conducting the Board of Survey. Your prime purpose is to show  
21 justification to survey that particular item in question, and  
22 evidence showed that it had been destroyed by vandalism or  
23 whatever, it should have been indicated on the report.

24 Q I direct your attention to the items denominated  
25 as "Four," under the heading, "Denominated findings."



2

Would you read that item, please?

3

4

A The item reads, "Fire condition showing some signs of deterioration."

5

6

Q Item One, that is referred to in a sentence further down. That is what we are talking about.

7

8

9

10

A Item One on the record, "Lookout tower, standard skeleton steel tower with wood watchhouse on a standard eight foot by eight foot concrete on wood pile foundation, overall height, approximately fifty feet."

11

12

13

14

15

Q Based upon your experience in the Coast Guard, and including your experience on a board such as this board, and with reference to that statement, Finding No. Four, do you have any opinion as to whether the tower showed signs of vandalism when this board surveyed it?

16

17

A No, this statement does not show one way or the other whether there was vandalism.

18

19

Q Would it be normal to make a statement such as Item Four if there had been vandalism?

20

21

A Again, that depends on the one who is preparing the survey.

22

23

24

25

Q I direct your attention to Plaintiffs' Exhibit No. 11, and specifically to Item Ten of that memorandum. Would you read Item Ten, please?

A Item Ten reads as follows: "That at the time of

2 the survey, the posted signs were still in existence."

3 Q Does the survey refer to the Board of Survey that  
4 is referred to in Plaintiffs' Exhibit No. 10?

5 A Well, as it is written here, I can't tell.

6 Q I direct your attention to Item Nine, the pre-  
7 ceding Item Nine in Plaintiffs' Exhibit No. 11; would you read  
8 Item Nine?

9 A It reads that, "A Board of Survey was made to re-  
10 move the structure, Board of Survey No. 10977, dated 8 May,  
11 1972."

12 Q I show you Plaintiffs' Exhibit No. 10; and I ask  
13 you if this is Survey No. 10977, dated 8th of May of 1972?

14 A It is.

15 Q And this is the survey, then, that is referred to  
16 in the "Findings of fact," No. Nine of Plaintiffs' Exhibit 11?

17 A It is.

18 Q And this is then also the survey that is referred  
19 to by the Board of Survey in "Findings of fact," No. Ten in  
20 Plaintiffs' Exhibit No. 11?

21 A It is.

22 Q In your experience as a Coast Guard Officer, have  
23 you ever had the occasion to prepare a report such as Plain-  
24 tiffs' Exhibit 11?

25 A Yes, I have.



Q Could you estimate how many such reports you have prepared?

A Oh, hundreds of them.

Q Is it the responsibility of the officer preparing such a report to normally include opinions under his findings of fact, or is it left to factual finding only, as the general responsibility?

A A lot of it depends on how you were directed to do it. The manual calls for a proclamation findings of facts, opinions and recommendations, and in this case it was just finding of facts.

Q Have you had occasion to prepare such reports, such as this, where you have had both findings of fact and opinions; you, personally?

A Yes.

Q Would you normally lump them together under one title, "Findings of fact," or would you normally give them separate titles?

A They are separate titles.

Q Is it your opinion, as an Officer of the United States Coast Guard, and based upon your experience in the Coast Guard, that the items generally denominated as, "Findings of Fact," were intended to be findings of fact, and not opinions from the person who prepared the report?

1  
2 MR. KAPLAN: I am going to object. That is ob-  
3 jectionable as to what is in the mind of the person  
4 preparing the report. What his experience may have  
5 been does not necessarily mean what that person in-  
6 tended.

7 MR. RUDOFISKY: My response to that is, number one,  
8 you have already qualified the document as a business  
9 record, and I am trying to find out if this witness,  
10 who is familiar with the business of the Coast Guard,  
11 and the normal course of business specifically with  
12 respect to findings of fact, and I think he has been in  
13 the Coast Guard for over twenty years, and he has pre-  
14 pared hundreds of these, and he would certainly be aware,  
15 as to what is finding of fact. If it is your position  
16 that the document is not a traditional record, but  
17 represents a personal subjective opinion of the pre-  
18 parer of the report, you would then have to qualify the  
19 witness.

20 MR. KAPLAN: I think the document speaks for it-  
21 self. There is a subheading, that the preparer put  
22 certain information under, and that, obviously, it is  
23 intended to have someone else ascertain what is true  
24 intent and what is not put down on paper. That is  
25 impasse.



MR. RUDOFISKY: If we can agree that that is the apparent intent, I will withdraw the question. That is all I wanted to bring out.

BY MR. RUDOFISKY:

Q Plaintiffs' Exhibit No. 11, just to conclude, is dated what date?

A 30 June, 1972.

Q To the best of your recollection, between the 8th of May, 1972, the date of the Board of Survey, and the 24th of June, 1972, the date of the accident, did anyone either verbally or in writing indicate to you that there was any problem with this tower?

A No.

Q Did they indicate to you that the tower had been vandalized between those two dates?

A No.

Q Did they indicate to you that the signs had been ripped down?

A No.

Q You were the Commander of this local station; is that correct?

A Yes.

Q If Lieutenant Ailiff had had a problem with this tower, would he have contacted you with respect to it?



2 A Yes.

3 Q In fact, he did contact you with respect to the  
4 tower when he needed the pictures taken; is that correct?

5 A That's right.

6 Q Is it fair to summarize that during this period,  
7 8 May, 1972, to 24 June, 1972, you had no reason to be con-  
8 cerned about this tower; is that true?

9 A That's true.

10 Q And you had absolutely nothing to do with the  
11 tower?

12 A That's true.

13 Q Did anyone under your command have any reason to  
14 be concerned with this tower that you were aware of?

15 A No.

16 Q Did you, or anyone under your command, do anything  
17 to the tower?

18 A No.

19 Q Did anyone under your command indicate to you that  
20 they had done anything with the tower?

21 A No.

22 MR. RUDOFISKY: I have no further questions.

23  
24 Subscribed and sworn to before me Amos R. Daniels, Jr.  
this \_\_\_\_ day of \_\_\_\_\_, 1975.

25  
\_\_\_\_\_  
Notary Public



I N D E X

WITNESS:    EXAM. BY:    MR. KAPLAN    MR. KIDDERLY  
 Amos R. Daniels, Jr.                      3                      22

- - -

E X H I B I T S

PLAINTIFFS'

FOR IDENTIFICATION

8	Document entitled "Permit," dated April 19, 1967, between the Long Island State Park Commission and the Department of Transportation.	9
9	Letter dated April 22, 1968, pertaining to the termination of the watch on Fire Island Lookout Tower.	11
10	Document entitled "Proceedings of the Board of Survey" dated May 8, 1972.	13
11	Letter consisting of two pages dated 30 June, 1972.	18

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CERTIFICATE

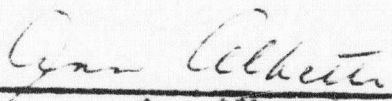
STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

I, ANN ALBERTI, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That AMOS R. DANIELS, JR., the witness whose examination is hereinbefore set forth, was duly sworn by me and that such examination is a true record of the testimony given by such witness.

I FURTHER CERTIFY that I am not related to any of the parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 14<sup>th</sup> day of March, 1975.

  
Ann Alberti,  
Reporter.



**AFFIDAVIT OF MAILING**

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK

ss

LYDIA FERNANDEZ

being duly sworn.

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 17th day of May 19 76 he served ~~two~~ <sup>two copies</sup> ~~copy~~ of the within

**GOVERNMENT'S APPENDIX**

by placing the same in a properly postpaid franked envelope addressed to:

Harry Lipsig, P.C., 100 Church Street, New York, N. Y. 10007

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, <sup>225 Cadman Plaza East</sup> ~~Washington Street~~, Borough of Brooklyn, County of Kings, City of New York.

Sworn to before me this

17th

day of

May

19 76

LYDIA FERNANDEZ

*Carolyn H. Johnson*

Notary Public in and for the State of New York  
My Comm. Expires March 30, 19 77